

DOCUMENT RESUME

03606 - [A2573699]

[Protest against Decision to Cancel an Invitation for Bids].
B-189832. September 12, 1977. 2 pp. + enclosure (1 pp.).

Decision re: A. R. & S. Enterprises, Inc.; by Paul G. Dembling,
General Counsel.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).

Organization Concerned: Department of the Navy: Naval Supply
Center, Charleston, SC; Small Business Administration.

Authority: Small Business Act, sec. 8(a) (15 U.S.C. 637(a)).
E-189352 (1977). E-185055 (1975). B-106066 (1976). B-181221
(1975).

The protester objected to the agency's decision to
cancel an invitation for bids under a small business set aside
in order to set the procurement aside for the "G(a)" program.
The determination to set aside procurement under section 8(a) of
the Small Business Act was a matter for the contracting agency
and the Small Business Administration (SBA) and was not subject
to review by GAO in the absence of a showing of fraud or bad
faith on the part of Government officials. (Author/SC)

3699

03608

Cunningham
P. 2 #1

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-189832

DATE: September 12, 1977

MATTER OF: A.R. & S. Enterprises, Inc.

DIGEST:

1. Determination to set aside procurement under section 8(a) of Small Business Act is matter for contracting agency and SBA, and is not subject to review by GAO in absence of showing of fraud or bad faith on part of Government officials.
2. In protest involving "8(a)" procurement, fraud or bad faith is not shown merely by allegation that SBA is violating its Standard Operating Procedure, which may be waived. Even if allegation is true and SBA is therefore required to properly waive Procedure, manner in which waiver is effected is for SBA, not GAO, to decide.

A.R. & S. Enterprises, Inc. (A.R.&S.), protests the decision of the Naval Supply Center, Charleston, South Carolina, to cancel invitation for bids (IFB) No. N00612-77-B-0076 (a small business set-aside for mess attendant services in Building 352, Naval Training Center, Orlando, Florida) pursuant to the request of the Small Business Administration to set the procurement aside for the "8(a)" program. A.R.&S. alleges that the cancellation and proposed "8(a)" set-aside violate a provision contained in a document entitled "Small Business Administration Standard Operating Procedure, Subject: Section 8(a) Program." The provision--Chapter 2, para. 7(b)(2)--stipulates that "8(a)" contracting opportunities will not be accepted where a "[p]ublic solicitation has already been issued under a small business set aside * * * in the form of an IFB * * *."

A.R.&S. further argues:

"It is clear that the SBA has violated its own internal regulations; and, absent a specific waiver by the Administrator of the SBA in this instance, AR&S contends that such action cannot be taken. The SBA's actions in this regard seem particularly questionable when viewed in light of the current Congressional hearings relating to abuses of the 8(a) program and

B-189832

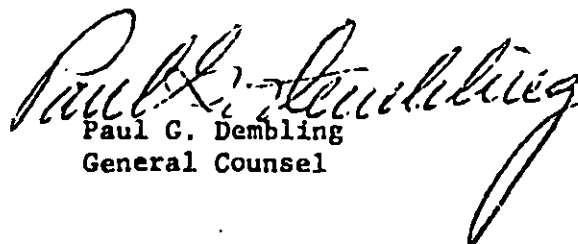
recent statements by the Administrator of the SBA in which he has promised to investigate and thoroughly eliminate questionable 8(a) practices."

In Maritime Maintenance & Labor Suppliers, Inc., B-189352, July 13, 1977, we recently stated:

"Our Office no longer reviews decisions to set aside procurements under the 8(a) program in view of the broad discretion accorded the SBA under the Small Business Act (15 U.S.C. § 637(a) (1970)) to enter into contracts with procuring agencies for the purpose of letting subcontracts to 8(a) firms. See Automation Information Data Systems, Inc., B-185055, June 15, 1976, 76-1 CPD 377; J. ts Services, Inc., B-186066, May 4, 1976, 76-1 CPD 300. Pursuant to that decision, we will not review protests against 8(a) set-asides unless the protester shows fraud on the part of Government officials or such willful disregard of the facts by Government officials as to necessarily imply bad faith. Whether or not the procurement should be set aside under section 8(a) is a matter for the contracting agency and the SBA to decide."

Fraud or bad faith in the making of the set-aside is not shown by the allegation that SBA is violating its Standard Operating Procedure, which may be waived. Cf. Kings Point Manufacturing Company, Inc., B-181221, April 29, 1975, 75-1 CPD 264. Even if the allegation is true and SBA is therefore required to properly waive the Procedure, the manner in which the waiver of the Procedure is effected is for SBA, not GAO, to decide. Consequently, we cannot question the cancellation of the IFB.

Protest dismissed.


Paul G. Dembling
General Counsel



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

IN REPLY
REFER TO

D-189832

SEP 12 1977

The Honorable V. Vernon Weaver
Administrator, Small Business
Administration

Dear Mr. Weaver:

Enclosed is a copy of our decision of today dismissing the protest of A.R. & S. Enterprises, Inc., against the Department of the Navy's cancellation of an outstanding procurement solicitation in order that an "8(a)" procurement for the required services might be made. The acceptance of the "8(a)" procurement by your Administration in the circumstance allegedly contravenes chapter 2, paragraph 7(b)(2) of SBA's Standard Operating Procedure.

If the allegation is true as we informally understand is the case, we recommend that a proper waiver of the Procedure be prepared.

Please inform us as to the action taken on our recommendation.

Sincerely yours,

Paul G. Demblin

Paul G. Dembling
General Counsel

Enclosure